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ABSTRACT

A study demonstrated that court interpreter failure to preserve pragmatic features in the interpreted version of courtroom testimony can potentially distort both the lawyer's question and the witness' response. Pragmatic features are defined as those aspects of an utterance that signal how the speaker intends the message to be taken. While some of the alterations made in translation are relatively trivial, others are serious and may critically influence the jury's assessment of whether the defendant is guilty or innocent. Data were drawn from court colloquies involving English-speaking attorneys and Spanish-speaking witnesses, using audio and videotapes from four trials. Focus of the analysis is on alterations to pragmatic markers, words or phrases that modify the basic message or signal a separate one. Results indicate that addition of pragmatic markers and features to witness answers can make the witness appear less confident of the testimony. When the witness is the defendant, the situation is potentially more critical. In contrast, deleting these same features from a witness response removes disfluencies, making the witness or defendant appear more confident, and he/she may be potentially perceived more favorably by the jury. (MSE)

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INTERPRETER ALTERATIONS TO PRAGMATIC FEATURES IN TRIAL TESTIMONY

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Interpreter Alterations to Pragmatic Features in Trial Testimony

The release of the Clinton videotapes from the Independent Counsel's Grand Jury investigation has thrust into the national limelight the importance of language in courtroom colloquies. Not only *what* defendants and witnesses say but *how* they say it plays a crucial role in the way their utterances are interpreted in a trial. For example, the degree of coerciveness of an attorney's question may influence the manner in which the witness responds; in turn, how much a witness hesitates in answering may lead the jury to an unwarranted conclusion.

When the witness is a non-native speaker of English, and an interpreter is used, the dynamics of the attorney-witness colloquy are significantly altered. As Gonsalez et al.(1991) say, the interpreter becomes a "language mediator who allows the witness to be linguistically... present"(p.155). Functioning essentially as the voice of the non-English speaker, the interpreter has the powerful ability to alter both the lawyer and witness utterances.

This paper, part of a larger study, will demonstrate that interpreter failure to conserve *pragmatic features* (those aspects of an utterance which signal how the speaker intends the message to be taken) in the interpreted version of the colloquy can potentially distort both the lawyer question and the witness response. While some of these alterations are relatively trivial, others are serious, and may be critical in influencing the jury's assessment of whether the defendant is guilty or innocent.

Our study examines court colloquies involving English-speaking attorneys and Spanish-speaking witnesses using audio and video tapes from four trials (the completed study will include data from 10 trials). We focus primarily on alterations to *pragmatic markers*, defined by Fraser(1996) as words or phrases which modify the basic message or signal a separate one.

Much of the prior research on Spanish-English court interpreting deals with lexical and syntactic, as well as pragmatic areas. For example, Gonsalez et al.(1991) discuss a broad spectrum of interpreter alterations, ranging from errors in verb tense and mood to omission of entire phrases. Berk-Seligson's (1990) ethnographic research examines the role of interpreters in legal proceedings. Her experimental study demonstrates how both grammatical and pragmatic alterations to interpreted testimony can influence the jury's perception of the witness.

In the research that explores particular pragmatic features in Spanish/English court proceedings, Hale(1996 a/b,1997 a/b) looks at the interpretation of politeness and register, while Rigney(1997) examines the lack of pragmatic equivalency between English and Spanish questions. A major concern in the literature is what constitutes an accurate interpretation. Many researchers (Gonsalez et al, 1991, Berk-Seligson, 1990, Edwards, 1995, de Jongh 1992, Hale 1996 a/b, 1997a/b and others) agree that an equivalent interpretation necessitates rendering into the target language every element present in the source language, including pragmatic as well as lexical and grammatical features.

Our own research presents a descriptive analysis of alterations to pragmatic markers, an area which have not yet received much systematic attention in the literature. We define each feature, discuss whether it was added, deleted, or substituted in the interpreted version, describe the impact of these alterations on lawyer questions and witness anwers, and consider the environment in which they occurred (direct examination or cross examination). Finally, we speculate as to the criticality of pragmatic alterations in influencing a jury, and discuss how patterns which emerge suggest solutions.

(1) W: un sueter negro
Gloss: a black sweater
I: the *uh* guy there in the black.

Example 1 is taken from direct examination, where the attorney's goal is to present his version of the facts through questioning his/her own witness. Here, the interpreter's version adds to the witness response the uncertainty marker *uh*, markers which signal that the speaker is uncertain about the message encoded in the utterance. Even in the establishment of routine information such as a witness's acknowledging the defendant's presence in court, we see that the addition of an uncertainty marker creates doubt not present in the original answer.

The interpreted version has recast the witness response from a clear and unambiguous description of what the defendant is wearing to a vaguely worded answer in which the defendant is offhandedly referred to as a guy. The addition of the uncertainty marker *uh*, along with the lack of specificity of the answer,

diminishes the credibility of the witness' identification of the defendant.

Example 2 is taken from cross examination, where the attorney's goal, questioning the opposition's witness, is to discredit the witness. In this example, the interpreter has once again added uncertainty markers. Under the glare of interrogation in cross examination, the witness is particularly vulnerable, and any suggestion of unsureness may help discredit him. In Example 2, the stakes are particularly high, since the witness is also the defendant:

(2) W: y ahi todos le gritaban que no le matara que no fuera cochino que no fuera asi.

Gloss: everybody was yelling at him not to kill him, not to be disgusting not to be like that.

I: everybody was *uh* crying *uh* not to kill him *uh uh* not to be like that not to kill him.

Although the defendant's original response contains no uncertainty markers, the interpreted version adds four, in the form of *uh*. These additions have the effect of making the male defendant appear uncertain, potentially undermining the credibility of his answer. This example illustrates an instance of how interpreter alterations can adversely affect the defendant's version of the facts, thus weakening the defense's case. As a result, the prosecution may gain the advantage.

Example 3 illustrates interpreter additions of more than one pragmatic feature. In this example, taken from direct examination, the defendant describes an event crucial to establishing the facts:

(3) W: le saco un punal
Gloss: produced a knife
I: *umm umm* produced *a a a* knife

While the original answer contains no hesitancy, the interpreted version has several. First, the interpreter adds the uncertainty marker *umm*. More striking, however, is the repetition of both the uncertainty marker and the article *a*. The addition of more than one feature characteristic of what O'Barr (1982) describes as a powerless speech style severely alters the degree of sureness with which the witness actually responded. Not only is the defendant's credibility affected, but, by doing so, the interpreter may have inadvertently aided the prosecution's case.

(4) W: yo no puedo decir ni que si que no.
Gloss: I can't say either yes or no.
I: I can't tell you yes or no *I don't know*.

In Example 4, taken from cross examination, the interpreter adds the evidential marker *I don't know* to the witness response. Evidential markers indicate the degree of the speaker's belief in the message contained in the utterance. In this example, the fact that the witness is also the defendant heightens the significance of the testimony, making interpreter alterations potentially more critical.

As we see, the defendant's original response is non-committal and neutral (*I can't say either yes or no*). However, the addition of *I don't know* in the interpreted version adds uncertainty, erroneously suggesting that the reason the defendant didn't say yes or no is that he doesn't *know* the answer. Thus the

addition of the evidential marker may affect the credibility of the witness's answer in the eyes of the jury.

In contrast, Example 5 shows how the *omission* of pragmatic markers from witness answers can make the witness appear *more* confident:

(5) W: yo estaba yo no yo no se porque *yo no se* porque estaba peleando con el, *o sea* el estaba encima de mi y yo no pude ver nada porque el

Gloss: I was I don't I don't know because *I don't know* because I was fighting with him, *I mean* he was on top of me and I couldn't see anything because he

I :I don't know because I was fighting with him he was on top of me I was not able to see anything

In this example, the interpreter has sanitized the witness's original response, omitting disfluencies (false starts and repetition), and deleting 2 evidential markers (*I don't know* and *I mean*). As a result, the interpreted version not only becomes more comprehensible, but the omission of the evidentials *I don't know* along with *I mean* makes the witness appear more certain of the facts.

Examples 6-8 illustrate how interpreter omissions to *lawyer* discourse can also be problematic, potentially disrupting an attorney's carefully crafted linguistic strategies, particularly important in cross examination. In Examples 6-8, the use of a period at the end of questions indicates that both the original and the interpreted lawyer questions were spoken like declaratives, with falling intonation, rather than with interrogative, or rising, intonation, thus affecting their interpretation as questions:

(6) L: *you believe* so but you're not sure.
I: No esta seguro.
Gloss: you are not sure
.

In Example 6, taken from cross examination, the original lawyer question uses the evidential marker *you believe* to imply that the supposition *you are not sure* is true. In the interpreted version, omitting the evidential marker transforms the lawyer's question into an assertion, diminishing the coerciveness of the utterance. As a result, the lawyer is less able to force the witness to produce the desired response, in this case an admission.

Example 7 shows what happens when assessment markers, which signal the speaker's assessment of the proposition encoded in the utterance, are omitted from lawyer discourse. Assessment markers occur most frequently in courtroom colloquies as tags at the end of questions (e.g. *didn't you*?, *isn't that true*?). In cross examination, they function as a coercive strategy to compel a witness to respond in a particular fashion. When these markers are omitted from a lawyer question, they alter its force:

(7) L: and you never got a good look at any of the people who actually attacked you outside *did you* .
I: nunca pudo ver bien a los que estaban afuera y lo atacaron a usted.
Gloss: you never saw clearly the people who were outside and who attacked you .

This example (which again involves the defendant as witness) illustrates how omitting the tag from the interpreted question diminishes the lawyer's ability to coerce the defendant to produce a negative answer. Without the tag *did you*, the interpreted question not only loses its coercive force, but, with no rising intonation, is transformed into a statement seeking confirmation. The defendant, no longer constrained by the demand to answer no, has greater latitude to answer as he chooses. Thus omitting the assessment marker shifts the balance of power from the lawyer to the defendant.

Finally, Example 8 shows how substituting an assessment marker in the original question with a different one in the interpreted utterance can critically alter its meaning. Although these assessment markers do not take the form of tags, they nevertheless indicate the speaker's assessment of the message:

(8) L: *Isn't it a fact* you told the police officer that you never saw the other vehicle.
I: no es un hecho de que usted tambien le dijo al policia de que usted nunca vio al otro carro.
Gloss: *It's not a fact* that you also told the police that you never saw the other car.

In the original question, the lawyer's use of the assessment marker *isn't it a fact* strongly implies that the witness should answer *yes*. However, substituting the marker *it's not a fact* in the interpreted version (and using falling intonation) transforms the question into a statement which, directly contradicting the strategy of the original question, seeks a *negative* response.

OBSERVATIONS:

What patterns emerge from the examples we've examined today? First, we have seen how the addition of pragmatic markers and pragmatic features to witness answers can make the witness appear *less* confident of the testimony. When the witness is the defendant, the situation potentially becomes even more critical as to how the jury perceives the testimony.

In contrast, deleting these same features from a witness response removes disfluencies, making the witness or defendant appear *more* confident. As a result, he/she may be perceived by the jury in a more favorable light.

We have also seen how deleting and substituting assessment markers from lawyers' questions can alter an attorney's strategy, significantly diminishing his/her ability to control the witness testimony, and unwittingly giving the advantage to the other side.

To sum up, adding, deleting, and substituting pragmatic features and markers in the interpreted version of the colloquy alters the original utterances of both the lawyer and the witness, thus inadvertently tampering with the spoken evidence, and potentially influencing the jury's judgment. Finally, interpreter alterations can give an advantage to the opposing lawyer's case, interfering, as Hale (1997b) says, "with the delicate balance of the adversarial system" (p.208).

Solutions to such problems lie in designing interpreter training programs that focus on the importance of conserving pragmatic features and illustrate, with examples from actual data, how omissions and additions of seemingly inconsequential features

such as *uh* can make a critical difference in insuring a fair trial for non-native speakers of English.

REFERENCES

Berk-Seligson, S.(1990) *The bilingual Courtroom: Court Interpreters in the Judicial System*, Chicago: University of Chicago Press.

Fraser, B.(1996) 'Pragmatic markers', *Journal of Pragmatics*, 6(2): 67-190.

Gonsalez, R.D., Vasquez, V.E., and Mikkelson, H. (1991) *Fundamentals of Court Interpreting: Theory, Policy, and Practice*, Durham, N.C.: Carolina Academic Press.

Hale, S.(1997a) 'The treatment of register variation in court interpreting', *The Translator* , 3(1): 39-54.

Hale,S. (1997b) 'Interpreting politeness in court: a study of Spanish-English interpreted proceedings', in S. Campbell and S. Hale (eds.), *Proceedings of the 2nd Annual Macarthur Interpreting and Translation Conference*, Milperra: UWS Macarthur/LARC, 37-45.

Rigney, A. (1997) 'The pragmatics of question/answer structures in a bilingual courtroom', *Paper presented at The 18th Annual Meeting & Educational Conference of the National Association of Judiciary Interpreters and Translators*, Seattle.